

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:	)	
	)	
ANGELIQUE O.,	)	OAH Case No. L 2003110463
	)	
Claimant,	)	
	)	
and	)	
	)	
NORTH LOS ANGELES COUNTY	)	
REGIONAL CENTER,	)	
	)	
Service Agency.	)	
_____	)	

**DECISION**

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on June 10, 2004, in Lancaster, California.

Claimant's mother represented Claimant.

Ruth Janka, Contract Administrator, represented Service Agency.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**ISSUE**

Whether Service Agency should continue to fund two nights per month of overnight respite care services for Claimant. The parties disagreed regarding the purpose for which respite was authorized: Service Agency maintains the purpose was to enable Claimant's mother to obtain medication from Mexico; Claimant's mother argues the service was also intended to allow her respite from Claimant's care and supervision and to allow her time with her other children without the stress of caring for Claimant.

**FACTUAL FINDINGS**

1. Claimant is a Service Agency consumer who was born on August 11, 1998. She is eligible for Service Agency services on the basis of Severe Mental Retardation.

2. Claimant also has other health and medical concerns. She has West Syndrome (infantile spasms). She was diagnosed with Leukemia in April 2002 and has undergone chemotherapy for the disease, which appears to be in remission. An infection in May 2002 led to seizures for one week; seizures have continued, particularly if infections are present, but are controlled by medications. She has recently been diagnosed with Autism.

3. Claimant takes two medications for the seizures, Topomax and Vigabatrin (Sabril). Sabril has not been approved by the Federal Drug Administration ("FDA"). She requires 4 250 mg tablets per day of Sabril, two at 5 a.m. and 2 at 5 p.m. Sabril has been successful and the physician plans to reduce and possibly eliminate the medication; Claimant's other medical issues have prevented implementation of this plan, but Claimant's mother is hopeful to begin the weaning process.

4. Claimant requires constant supervision for her own safety. She engages in self-injurious behavior, such as hitting her face and head, and wears a helmet for protection.

5. At the August 2, 2002 Individual Program Plan ("IPP") meeting, Service Agency agreed to "fund two nights per month of out of home respite at a rate of \$65 per night to allow mom to travel to and from Mexico and 48 hours per month of parent vendored respite." Consumer Services Specialist Nancy Hinkle testified the two nights of out of home respite should have been designated as "child or day care," since the service was not specifically intended as respite for Claimant's family.

6. At the time of the August 2002 meeting, Claimant's mother obtained Sabril from Mexico and typically stayed overnight in the United States-Mexico border area in order to obtain one month's supply. She initially sought to obtain the medication from a mail order pharmacy in Canada, but one of the shipments was not received, causing the switch to a walk-in pharmacy in Mexico in July 1999. She pays \$60 to \$80 for a box of 50 tablets.

7. The process of obtaining Sabril is stressful. Claimant's mother does not drive and one of her older children usually drives her to Mexico. United States Customs inspectors at the border do not usually allow the importation of more than 50 tablets at a time, which causes Claimant's mother to remain in the area to make one purchase each day to complete the monthly dosage. At times, inspectors confiscate the medicine and she has to try again later.

8. Jaime D. Mejlszenkier, M.D., a Service Agency staff physician, testified that Sabril can be reliably obtained from mail-order Canadian pharmacies. A one-and-one-half month supply, which is typically a three-month supply for patients receiving the customary dosage of 500 mg per day, costs approximately \$100. In his opinion, the medication is widely prescribed by U.S. physicians to treat complex seizures and the available supply from established Canadian mail-order pharmacies is generally safe; the same laboratories produce the Sabril sold in Canada

and in Mexico.

9. Claimant's mother, however, does not trust mail delivery, in part because of her past experience with the Canadian pharmacy. She has established a relationship with her present pharmacy in Mexico and the medicine she obtains has been helpful to Claimant. The Mexican pharmacy can mail the medication, but Claimant's mother believes the face to face contact will ensure she receives the proper medication. Claimant's mother is concerned that unless she has the medication in her hands her daughter's life will be in danger.

10. The current IPP, prepared after a meeting on August 12, 2003, stated that "the continuation of funding of two nights per month of out of home respite at a rate of \$65.00 per night to allow mom travel time to and from Mexico will be staffed with the North Los Angeles County Regional Center interdisciplinary team." Supervisor Hinkle testified this language provided for review of continued funding for day care pursuant to Service Agency's exception policy.

11. The interdisciplinary team reviewed the request and denied continued funding. It reviewed the matter as an exception to its childcare policies because of Claimant's greater care and supervision needs. However, because mail order was a more cost-effective method of obtaining the medication, Service Agency will only fund overnight child care for one additional month in order for Claimant's mother to obtain a back-up supply in the event of mail delivery problems. Service Agency further agreed to consider additional funding on a month by month basis in the event of mail delivery problems.

### LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code<sup>1</sup> section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. Section 4501.

2. Section 4512(b) defines "services and supports for persons with developmental disabilities" as:

"... specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives...."

Services and supports for persons with developmental disabilities include child care and respite

---

<sup>1</sup> All further references are to the Welfare and Institutions Code.

care. Section 4512(b).

“In-home respite services” are defined as “intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, for a regional center client who resides with a family member.” Section 4690.2(a). These services are designed to assist family members in maintaining the client at home, to provide appropriate care and supervision to ensure the client’s safety in the absence of family members, to relieve family members from the constantly demanding responsibility of caring for the client, and to attend to the client’s basic self-help needs and other activities of daily living that would ordinarily be performed by family members. Section 4690.2(a).

In this case, the evidence establishes that the two nights per month of “out of home respite” service was intended to allow Claimant’s mother to obtain Sabril and that the care and supervision of Claimant was incidental to this purpose. Accordingly the service is not “respite,” but is more appropriately characterized as “child care.”

In any event, even if labeled “child care,” the service is one that may be funded as a service or support for Claimant, a person with a developmental disability.

3. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. Section 4620 et seq. Thus, regional centers are responsible for developing and implementing individual program plans, for evaluating consumer service needs, for taking into account consumer preferences, and for ensuring service cost-effectiveness. Sections 4646, 4646.5, 4647, and 4648.

4. In this case, Service Agency has properly balanced the relevant factors in arriving at the funding proposal. Thus, Claimant needs assistance to obtain Sabril, a critical medication that controls the seizures and allows Claimant to undertake other developmental tasks. Mail order is the most cost-effective method of obtaining the medication. Claimant’s mother’s preference for in-person acquisition and her concerns about reliability of mail delivery have been taken into account in Service Agency’s proposal. Under the proposal, Service Agency will fund one more month of the service and Claimant’s mother will always have one month in reserve while she waits for mail delivery, with the option of additional time if problems arise.

5. By reason of the foregoing, Service Agency may discontinue funding the two nights per month of overnight child care, previously described as respite, which were intended to enable Claimant’s mother to obtain Sabril.

### ORDER

1. Claimant's appeal is denied.
2. Service Agency need not continue to fund the two nights per month of overnight

child care, previously described as respite, to enable Claimant's mother to obtain Sabril.

3. The parties are directed to cooperate in implementing Service Agency's proposal.

Dated: June 22, 2004

Original signed by

---

Samuel D. Reyes  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.